

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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UNITED STATES OF AMERICA, . Case No. 1:18-cr-043
Plaintiff, . ***In-Person Status Conference***
- v - .
YANJUN XU, . Tuesday, October 22, 2019
Defendant. . 11:04 AM
.. Cincinnati, Ohio

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE

APPEARANCES:

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P R O C E E D I N G S

(In chambers at 11:04 AM.)

THE COURT: We'll go on the record.

We are here in chambers on the criminal docket in the matter of *United States of America versus Xu*. We're set for an in-person status conference, attorneys only.

For purposes of the record, I'd ask counsel to enter their appearances. On behalf of the government?

MR. MANGAN: Tim Mangan, Your Honor.

MS. GLATFELTER: Emily Glatfelter.

THE COURT: Good morning to the both of you.

MR. MANGAN: Good morning.

MS. GLATFELTER: Good morning.

THE COURT: And on behalf of the defendant?

MR. KOHNEN: Good morning, Your Honor. Ralph Kohnen.

MR. McBRIDE: Good morning, Judge. Bob McBride.

MS. CORS: Good morning, Your Honor. Jeanne Cors.

MS. TAYLOR: Good morning. Sanna-Re Taylor.

THE COURT: Good morning to all of you.

Well, we're here for a status conference, and among the things I was hoping to touch base on was anything you want to talk about, but I'd like to review the calendar that we've worked hard on and is comprehensive and I think it's great.

I want to confirm where we are on the pending motions, i.e., to confirm when the government will file its memos in

1 opp. to motions to dismiss, motion for bill of particulars,
2 motion for disclosure.

3 I want to touch base, third, on translators, and then I
4 want to touch base on the pending CIPA motion, and I want to
5 touch base on whether there's another one coming, which I think
6 there is, and I just want to touch base and see where we are.

7 So in terms of the calendar, if you have it before you, Ms.
8 Frankian worked hard on this with you all. It's comprehensive.
9 And as I understand it, the Rule 12 and suppression motions
10 filing deadline's coming up, but the stuff that's been filed, I
11 anticipate opposition from the government by December 4 and a
12 reply by December 18, unless I misapprehend.

13 We do have a *Jencks* disclosure date on the calendar which
14 is earlier than the statute requires, and I want to make sure
15 that that's where we are. The statute is what the statute is,
16 and I'm not looking for extensive briefing on that particular
17 issue.

18 But in general, what do you make of the calendar, and do
19 you have any calendar-specific comments as we begin this
20 conversation today?

21 On behalf of the government?

22 MR. MANGAN: Your Honor, we think the calendar looks
23 good too. We did want to clarify, for the motions that are
24 pending, you know, exactly when the response date would be. I
25 think when we originally talked about a deadline, there was

1 that initial motion deadline that is now called the Rule 12 and
2 suppression motion.

3 What we have pending right now is a motion to dismiss.
4 There's also a motion for a bill of particulars and a motion
5 related to the *Brady*, slash, *Jencks*, *Giglio* information. We
6 just wanted to clarify when the Court -- obviously, the motion
7 to dismiss would fall pretty squarely under that. We just
8 wanted to clarify, it sounded like the Court wants our response
9 for those under that deadline, which would be fine with us.
10 But if the Court wanted it earlier, we just wanted to make sure
11 we understood that.

12 THE COURT: I'm really interested in what's manageable
13 for you, and I jumped to the conclusion that December 4 was
14 when we'd see memos in opp. to those three pending motions.

15 MR. MANGAN: It's manageable for us. That's not a
16 problem, but I just wanted to make sure I was clear in terms of
17 what our obligation was.

18 THE COURT: Is the defendant comfortable with those
19 motions briefing out on that schedule?

20 MR. KOHNEN: We are with respect to those particular
21 motions, Judge, but --

22 THE COURT: Well, that's a good statement until we got
23 to the "but."

24 MR. KOHNEN: It's going to get worse. I don't want to
25 interrupt, but --

1 THE COURT: All right.

2 MR. KOHNEN: Let me -- I think, Judge, that probably I
3 ought to mention this, because our client has sort of changed
4 course and asked us if we would respectfully ask the Court for
5 a trial date that occurs after May of 2020. I drew the short
6 straw for this.

7 THE COURT: I'm sorry?

8 MR. KOHNEN: I drew the short straw for this.

9 THE COURT: Where's the guy from New York?

10 MR. KOHNEN: Umm --

11 (Laughter.)

12 THE COURT: Go ahead.

13 MR. KOHNEN: Also his family in China, they feel
14 because of the political situation in the U.S. and the sort of
15 anti-China sentiment that is building and probably will reach a
16 crescendo in the spring of 2020, he and his supporters back
17 home feel very strongly that a trial after that date would be
18 more fair.

19 THE COURT: And what do you mean by "after that date"?
20 After -- you tell me. I'm not going to say it.

21 MR. KOHNEN: Well, my understanding is that -- and
22 this hasn't been expressed to me this way, but I'm reading
23 between the lines. May of 2020 is the next presidential
24 primary election. You know, we're dealing with people from a
25 different culture, thousands of miles away, and their feeling

1 is that Mr. Xu, Mr. Yanjun, will be more likely to get a fair
2 trial after that political upheaval has ended.

3 THE COURT: Well, that upheaval is scheduled to
4 continue through November of 2020. I'm just trying to
5 understand what you're saying in terms of a date.

6 MR. KOHNEN: I can't be any more logical. I don't
7 know. That's the request that has been put to us.

8 THE COURT: What's the request, that we not try it in
9 May?

10 MR. KOHNEN: No, we try it after May of 2020.

11 THE COURT: And what does that mean? June, or does
12 that mean December, or 2021, or --

13 MR. KOHNEN: I --

14 THE COURT: It's your request. You need to be
15 specific with me.

16 MR. KOHNEN: After May of 2020 is as specific as I can
17 get. That's what they've asked.

18 THE COURT: Very well. I hear the request, and we'll
19 thrash through it at the appropriate time.

20 MR. KOHNEN: But --

21 THE COURT: Go ahead.

22 MR. KOHNEN: I would say, Your Honor, maybe trying to
23 salve the wound a little bit, we're concerned that, working
24 from the existing trial date backward -- and we've all worked
25 in good faith on this, I think your staff will agree -- because

1 of some problems that we've incurred in investigating our case
2 and wrapping our brains and getting ahold of the unexpected
3 sixth tranche of discovery may make what is in this trial
4 calendar, the trial date, untenable regardless.

5 And my colleagues are able to speak on that. I apologize
6 in advance, Judge, but there are things that have come up that
7 we didn't anticipate that may make this calendar in need of
8 adjustment.

9 THE COURT: And when did you discover that?

10 MR. KOHNEN: We're discovering it daily.

11 THE COURT: Okay.

12 MR. KOHNEN: But --

13 THE COURT: Fair enough. I'm as chilled as I can be,
14 and you drew the short straw and you've made the statement.

15 Does the government wish to respond from the seat of its
16 pants at this time?

17 MR. MANGAN: Not at this point, Your Honor.

18 (Laughter.)

19 THE COURT: Well, the Court orders you to respond.

20 MR. MANGAN: Your Honor, I --

21 THE COURT: And it's from the seat your pants.

22 MR. MANGAN: I understand.

23 THE COURT: I, you know --

24 MR. MANGAN: You know, my initial thought is do we
25 have any issues from a witness standpoint that it would

1 complicate.

2 THE COURT: Uh-huh.

3 MR. MANGAN: If we're just talking about a month or
4 two months, I think we can try to work through something like
5 that. It's tough to anticipate. Are we talking much longer,
6 then that may -- you know, that obviously gives us more time to
7 plan for it and prepare.

8 But, you know, I feel like, in terms of our discovery
9 production, that we have gotten out what we need to get out.
10 There are some smaller things that are coming in. For example,
11 we received some material from France from a treaty request and
12 we produced that to them at the -- you know, by the discovery
13 deadline, along with, sort of, the initial translation. We
14 have a fuller translation we'll send to them. But it's smaller
15 pieces that are trickling in at this point.

16 So at least from a discovery standpoint, we feel that we're
17 in a good position as far as having at least turned it over. I
18 realize that that then puts them in a different timeline for
19 analysis, and I understand that.

20 So I think we have some -- we have some flexibility on our
21 part. It's hard to respond when we just don't know kind of
22 when it is. But the way the schedule is now I think builds in
23 a lot of time for us to work on things both in terms of motions
24 and looking at the evidence. Another month or two I don't
25 think has a huge impact on us.

1 That's from the seat of my pants, Judge.

2 THE COURT: And I'm not committing you to that
3 position. I was just curious what your visceral reaction was.

4 MR. MANGAN: I think generally we've stayed on track
5 in terms of getting things out as we hoped to, so --

6 THE COURT: Well, I think that's a credit to both
7 sides. I think you guys have been working really, really hard,
8 and you came up with a calendar and it looked manageable, and
9 now there's a pause. So, I mean, we'll deal with it in due
10 course. So be it.

11 MR. McBRIDE: Judge, perhaps I could add some further
12 information. Mr. Kohnen was kind enough to break the topic. I
13 have the most direct contact with Mr. Xu, through an
14 interpreter, since I'm reviewing the discovery with him.

15 I think he and his family's concern is, with regard to the
16 politics surrounding the presidential election that's coming
17 up, is the obvious stance of the leaders in the field for both
18 parties, and they believe that the issue of China and China's
19 theft of intelligence materials, the technology, from the
20 United States is going to be an issue that is raised to the
21 public level perhaps beyond where it would be normally just
22 because of the nature of the candidacies and so on, of the
23 candidates that are here. And so they're very concerned about
24 the political season influencing a jury pool and the general
25 sentiment in the United States.

1 As Ralph mentioned, Your Honor, they come from Communist
2 China where the government controls almost everything or at
3 least has a great deal of influence. So their scepticism about
4 our system of government persists. It has been one of our
5 challenges in dealing with our client.

6 So we bring forward their request because I think it's an
7 important request to the client and something that both the
8 Court and the government need to be cognizant of as we move
9 forward as we deal with our defense.

10 With regard to the discovery issues, Judge, the government
11 has really been great about providing information to us. We
12 did recently receive a sixth tier of information -- we've been
13 calling them tiers, Your Honor -- which is voluminous, and
14 appreciated from the government because it includes a lot of
15 important information in the preparation of our defense. But I
16 am only through tier five with Mr. Xu, because, as you know,
17 we've got to go with a translator and do it personally. We
18 have that obligation.

19 Now, Mr. Xu has the untranslated version of tier six which
20 he is beginning to go through. But it's a more tedious process
21 than we have anticipated, not because anybody is throwing
22 roadblocks, but because of the natural logistics of dealing
23 with Bureau of Prisons, the limited amount of time that we
24 have. So that's taking a little more time.

25 With regard to our investigation, we have been trying to

1 access assets in China, if you will, the lawyer that is
2 assisting the family, to identify individuals that perhaps we
3 may want to interview. We've even gone to the consulate to try
4 and get further access, and we're getting stymied.

5 We believe that trying to get some of this information is
6 very important to Mr. Xu's defense, and it is really out of our
7 control. Our Chinese -- or the lawyers helping the family in
8 China are trying, but it's also a little bit of our
9 communicating to them the need for evidence and what kind of
10 authentication we might need and so on.

11 So these things are taking some unanticipated turns in
12 terms of the timing. It's not on the government's hands,
13 they've been great, but with regard to just things that we are
14 facing that are unusual in this case, Your Honor.

15 THE COURT: I hear that and understand that.

16 MR. KOHNEN: Thank you. And, Judge, just sort of in
17 my defense, I mean, these were the unanticipated things that
18 have come up that you asked about that have, again, been beyond
19 everybody's control. But I do want to stress again, everybody
20 worked cooperatively and in good faith toward this criminal
21 trial calendar, and we really appreciate your staff and the
22 cooperative effort that everybody's been involved in. We feel
23 badly about asking the Court to unravel this, but we must.

24 MR. MANGAN: Your Honor, if I could.

25 THE COURT: Yes.

1 MR. MANGAN: Just as I'm thinking about it.

2 With respect to the initial concern that was brought up
3 regarding what effect the larger political climate could have
4 on a trial, obviously I think we all know, you know, you can
5 try to adjust for that as best you can in jury selection. We
6 have had other economic espionage cases even recently out in
7 California. They've been able to get through them and they've
8 involved China. I understand this might be at a higher level,
9 I totally understand that, in terms of, you know, notoriety,
10 but I think those things are going to go on regardless. I
11 don't know that we can predict when the overall larger climate
12 will be at an ebb or, you know, a high point or a low point,
13 because it's been sort of where it is for a while now.

14 So I don't know that a month earlier or a month later would
15 really change that dynamic. I don't know if, based on their
16 comments about their skepticism towards our system, if a bench
17 trial would be in order, if they're amenable to it. But
18 generally I just don't know that moving it a month or two will
19 change the overall concern.

20 THE COURT: While we're going around the table, I
21 mean, I have the same general reaction. I mean, the world is
22 what the world is. But I'm not going to make a decision from
23 the seat of my pants. I'm just going to insist that both sides
24 speak from the seat of their pants, and then I'll try and twist
25 that and come back with a decision that's appropriate.

1 And I was biting my tongue not to snap back at you, "Why
2 doesn't he try it to the bench?" But then you went on with
3 they don't trust government officials, period.

4 MR. McBRIDE: Yes, sir.

5 THE COURT: But why doesn't he just try it to the
6 bench? You don't have to respond.

7 We're going around the table. Would you like to be heard,
8 Ms. Frankian? I'm not requiring you.

9 THE LAW CLERK: It's not too much trouble to just push
10 it a month or two, if that's going to make your client more
11 comfortable. I mean, the dates are fairly spread out, so I can
12 just move the last few deadlines out and fill it in until June
13 or August.

14 I think it may actually get worse as it gets closer to
15 November, but, I mean, if he's more comfortable with an extra
16 month, I don't think -- from my perspective, I don't think it
17 would change or it would be too difficult to accommodate.

18 THE COURT: I think that's accurate, and I appreciate
19 it.

20 But I think you guys should talk outside the Court's
21 presence and really figure out where you are and what you want
22 to propose. And if you're on the same page, the Court's not
23 going to be difficult. I'm sure you already thoroughly
24 appreciate my willingness to give up the month of June in Maine
25 and --

1 THE LAW CLERK: I meant September.

2 THE COURT: Pushing it to September?

3 THE LAW CLERK: (Nods head up and down). That was a
4 joke.

5 THE COURT: I know. While we're making jokes, you
6 push it to May of 2022 and we'll have a new district judge.

7 MR. KOHNEN: We don't want that.

8 THE COURT: All right. So we've got a calendar, and
9 we've confirmed when your memos contra are coming in on the
10 three pending pretrial motions. We have a Rule 12 and
11 suppression motions deadline of November 13. Does the defense
12 anticipate filing pleadings, those pleadings, by that date
13 or --

14 MS. CORS: Your Honor, at this point I don't know that
15 we have any other substantive motions that we would intend to
16 file by then. One issue I would raise is if the government is
17 going to file all of the responses close to the response date,
18 we may be jammed up on replies with only a two-week turnaround.
19 And if the Court's amenable, we can, you know, raise the issue
20 at that time. But that would be my only concern, if we get
21 three responses and have replies due within two weeks to all of
22 them, that may be an issue.

23 THE COURT: That's what the rules provide for.

24 The Court's going to be amenable to you professionals
25 preparing and prosecuting and defending this case as you

1 suggest if it's not untoward. I get it. I remember the
2 practice.

3 MS. CORS: Thank you.

4 THE COURT: Vaguely.

5 MR. MANGAN: Your Honor, could I suggest we move
6 forward with the calendar and set maybe a status conference
7 somewhere in between to revisit the defense request?

8 The only point, before we kind of got on to this, that I
9 was going to bring in terms of maybe a change was, there's a
10 joint proposal for the parties to present names of two
11 interpreters in case we would need them either for trial or a
12 dispute in translation, but we've got the other deadline
13 regarding when we would actually work on whether or not we have
14 a dispute in the translation, and that's more into 2020.

15 And so I was going to ask if we could perhaps move that
16 deadline back into 2020 where it would fit with -- because we
17 won't even know if we have a dispute until, it looks like, you
18 know, February or March when we would make those cross-
19 disclosures.

20 So that's the only thing, is the deadline for the parties'
21 joint proposal of the Court's interpreters. I think we're
22 supposed to find and submit a couple names, but it looks like
23 they wouldn't actually be needed for several months, if at all.
24 So that was the one thing I was asking if we could forestall
25 until a later period, because they may not be needed.

1 THE COURT: I just don't want to get sandbagged on
2 that and get in a crush, as I have experienced previously.

3 MR. MANGAN: I understand. I was just looking at the
4 other -- the deadline for us to figure out if there's a dispute
5 is still a little ways off.

6 THE COURT: Right. And where are we on that? I have
7 an e-mail to chambers, copy to everybody, that you say all your
8 witnesses are going to be English speaking.

9 MR. MANGAN: Correct. There's --

10 THE COURT: I'm talking about trial translation, and
11 then I'm going to talk about document translation.

12 MR. MANGAN: Yes.

13 THE COURT: And on trial translation, I'm hearing from
14 you you don't think we're going have any translation issues as
15 to trial testimony. The defendant's going to have an
16 interpreter.

17 MR. MANGAN: For him to hear the testimony, yes.

18 THE COURT: Right. What do you think about, do you
19 know yet, are there disputes in translation as to written
20 documents presented?

21 MR. MANGAN: I think we don't know. We've produced
22 our translations. My guess -- they can speak to it -- is
23 they're still vetting it, whether it's through the client or
24 through the interpreter. And they're still, obviously, working
25 through the discovery, so I don't know yet.

1 THE COURT: So --

2 MR. McBRIDE: Judge, I think there may be some. I
3 think our review of the core evidence that was presented, the
4 tier one we didn't see anything that we thought might be
5 controversial. But as we go through the process, we have found
6 some commentary or interpretations that our interpreter, who
7 has read them, and our client indicate may not be what they are
8 in terms of tone and seriousness.

9 For instance, I would give an example, Your Honor, there
10 are some comments about working for the state that are
11 presented as very straight up in the translation, but my
12 interpreter and my client are telling me, well, these are
13 really in the tone of sarcasm, Your Honor.

14 THE COURT: That's not a translation issue, is it?

15 MR. McBRIDE: Only in the fact -- only in such that
16 the characters and the way they're organized relate to tone,
17 Your Honor.

18 THE COURT: The characters being the characters of the
19 language?

20 MR. McBRIDE: Yes, Your Honor.

21 THE COURT: I just don't want to get behind the
22 eightball on translation issues, and so we sent this out to you
23 guys, you guys worked this through, and it's where we are. I'm
24 going to be reasonable. I've tried to say that four times.
25 It's on the record.

1 You can star that portion.

2 But you should make an affirmative strong statement on the
3 record, Ms. Frankian.

4 THE LAW CLERK: Well, the reason I selected that
5 particular date was just because the last time we needed
6 interpreters, I think we -- I can't remember if the parties
7 first proposed two interpreters and then we also went looking
8 to see if there was anyone else or if we did it the other way
9 around.

10 But everyone I called was unavailable, and that was several
11 months before the trial, particularly given the length of
12 trial. So, for instance, they were available the first two
13 weeks but not after that. So I just wanted to make sure that
14 we didn't lose a good interpreter because we didn't --

15 MR. MANGAN: Okay.

16 THE LAW CLERK: -- get them early enough.

17 THE COURT: So given that history and where we are on
18 this potentially moving calendar and my request that you guys
19 confer and figure out where we really are, and we have another
20 status conference, that should be in the mix and you'll
21 understand our concern.

22 MR. MANGAN: Okay.

23 THE COURT: We've reviewed the calendar. I got my
24 memos contra clarification. We've talked about translators.

25 On the government's -- is it CIPA, CIPA (pronouncing)?

1 MR. MANGAN: We've always called it CIPA, but I don't
2 think it -- it's a matter of interpretation.

3 THE COURT: Well, I will continue to call it CIPA and
4 try and be --

5 MR. MANGAN: Okay.

6 THE COURT: On your first CIPA motion, I know you need
7 the Court to act on it expeditiously, and we will. I have a
8 sense that --

9 MR. MANGAN: We did mention a supplemental one.

10 THE COURT: Right. But before we even get to that,
11 among the determinations I think I might be required to make
12 are whether the material in dispute is discoverable, whether
13 it's privileged, and then determine if the information is at
14 least helpful to the defense. I need to hear from them in that
15 regard before I resolve the motion.

16 I've told them I will sit with them today on the record *ex*
17 *parte*, sealed, if they're prepared to make that presentation to
18 me.

19 MR. MANGAN: Okay.

20 THE COURT: They've asked to have a chance to do it in
21 writing. In front of the court reporter would be in writing.
22 But if they need some time to do that, the moment I get that,
23 we will act on your motion.

24 MR. MANGAN: Okay.

25 THE COURT: And I understand, as to the next one

1 coming, that, you know, it takes a while and --

2 MR. MANGAN: We think we'll have it in about two
3 weeks, and it's going to be much smaller, shorter than the one
4 that's pending.

5 THE COURT: And I hate to say this on the record, but
6 I really think if we hear from the defendant timely, that we're
7 going to resolve your first motion within two weeks.

8 MR. MANGAN: Okay.

9 THE COURT: So that just gives you a sense.

10 MR. MANGAN: I will go back and try to -- we'll try to
11 do it as quickly as we can.

12 THE COURT: I'm not pushing you.

13 MR. MANGAN: Okay.

14 THE COURT: I'm concerned that they're pushing me, and
15 I'm trying to tell you, we've got it, we understand --

16 MR. MANGAN: Okay.

17 THE COURT: -- we're on it and, unless you continue
18 this trial for six months, then we'll look at it again in six
19 months.

20 MR. MANGAN: The one I had a few years ago with Judge
21 Beckwith, it was similar in that we sort of had to wait to the
22 end of discovery, and then the defense submitted an *ex parte*
23 statement --

24 THE COURT: Right.

25 MR. MANGAN: -- of potential defenses, and then the

1 judge, you know, did the analysis and ruled on it. So, no, I
2 think that we've sort of anticipated that all along.

3 THE COURT: Fair enough. I sensed the last time we
4 were all in each other's presence that you were trying gently
5 to suggest that the Court get on with it, and I thought you did
6 a nice job of that.

7 MR. MANGAN: Thank you.

8 THE COURT: So --

9 MR. MANGAN: Then I won't say anything else.

10 (Laughter.)

11 THE COURT: So we're going to try and get on with it.

12 That sort of walks through what I had hoped to walk
13 through. I'm not prepared to release you today. I mean, at
14 the end of the conversation I'm going to extend the Court's
15 prior ends of justice findings, this is a complex case, there's
16 voluminous discovery, we've worked hard on establishing a trial
17 calendar and agreed upon by all parties, and in order to serve
18 the ends of justice, the Court's going to toll time until
19 trial. There will be incoming motions which will toll time as
20 well, but I'm dotting my i's and crossing my t's.

21 Are there other issues you all would like to discuss? And
22 we'll start with the government.

23 MR. MANGAN: I think the only thing I can think of,
24 Your Honor, would be a date for when you would want us to come
25 back in.

1 THE COURT: I agree. When would you like me to harass
2 you again?

3 MR. MANGAN: If they're staying to talk with you
4 afterwards, you know, I know you want us to confer --

5 We'll just do that some other time whenever your group
6 wants to call.

7 -- so we can come back --

8 THE COURT: In 30 days, 45?

9 MR. MANGAN: I was going to say 30, yeah, a month.

10 THE COURT: And when does that put us, in late
11 November, mid-November?

12 MR. KOHNEN: Uh-huh.

13 THE COURT: Do you think you'll be ready to chat again
14 with the Court --

15 MR. MANGAN: I think so, yeah.

16 THE COURT: -- on where are we really heading on
17 calendar, or is that 30 days unrealistic?

18 MR. KOHNEN: I think so.

19 THE COURT: And I hate to interrupt you having that
20 conversation. If I got out of the room and you would have it
21 now --

22 MR. MANGAN: We can follow up with a call, Your Honor.

23 MR. KOHNEN: Yeah.

24 MR. MANGAN: That's no problem.

25 THE COURT: All right. Well, we're looking at the

1 calendar.

2 THE LAW CLERK: So we're actually in trial the third
3 week, the 30 days out, and then the following week is
4 Thanksgiving.

5 THE COURT: Who is the prosecutor?

6 THE LAW CLERK: I'm sorry?

7 THE COURT: Who is the prosecutor?

8 THE LAW CLERK: No, it's a civil trial.

9 THE COURT: I was just going to complain to Miss Emily
10 while she was here.

11 It's the first time I've used your first name on the
12 record. I apologize.

13 MS. GLATFELTER: That's all right.

14 THE LAW CLERK: December 3rd at 11:00 AM.

15 THE COURT: Are you guys able to look at your
16 calendars?

17 MR. MANGAN: Yes, that's fine for me.

18 THE COURT: All right. It works for the government,
19 both?

20 MR. MANGAN: Yes.

21 MR. KOHNEN: Good?

22 MS. CORS: That's fine.

23 MR. McBRIDE: Yeah.

24 THE COURT: All right. And we're going to do it in
25 person; correct?

1 MR. MANGAN: Yeah.

2 THE COURT: And is the New York lawyer coming?

3 MR. KOHNEN: I'm sure he hopes to, Judge. Our wires
4 got a little bit crossed on today's date.

5 THE COURT: Oh, I'm teasing.

6 MR. KOHNEN: We didn't adequately calendar it, and
7 so --

8 THE COURT: No problem.

9 MR. KOHNEN: -- we kind of got in a scramble.

10 THE COURT: That was a joke. I enjoy having him here
11 to pick on. And I know he likes it, so --

12 MR. KOHNEN: He does, and I like it too.

13 THE COURT: Give him our regards and a copy of the
14 transcript.

15 So we're coming back on that date and time. And there was
16 nothing more from the government today?

17 MR. MANGAN: No, Your Honor.

18 THE COURT: Did you all have more issues you'd like to
19 float?

20 MR. KOHNEN: No. Thanks, Judge.

21 THE COURT: Okay. Are you able and willing to stay
22 with me briefly on the record?

23 MR. McBRIDE: I am, Your Honor.

24 MR. KOHNEN: Yes.

25 THE COURT: All right.

1 MR. KOHNEN: And just to complete the record -- sorry
2 to interrupt, Judge -- we, at Ms. Frankian's suggestion
3 yesterday, we thought it was a really good idea to get you
4 informed. The reason we need or have requested a little time
5 to provide something in writing is we just didn't have enough
6 time to get that together. So I think it will be pretty
7 redundant.

8 THE COURT: Fair enough. I just want to make sure
9 you're comfortable doing it now. If you aren't, tell me and
10 we'll --

11 MR. KOHNEN: Yeah.

12 THE COURT: Okay. So we are going to conclude this
13 status conference, and I'm going to proceed to, *ex parte* under
14 seal, chat with the defendant as required by law, which is a
15 polite way of saying thank you for stopping by.

16 MR. MANGAN: We'll excuse ourselves.

17 THE LAW CLERK: Judge?

18 THE COURT: One more thing while we're still on the
19 record.

20 THE LAW CLERK: Would it be helpful if we picked a
21 date sometime in June or July that you can run by your client
22 and you can check with your witnesses so, just in case that
23 works, you have a date that works on our calendar as well, or
24 do you want to confer first and then come back to us?

25 THE COURT: I'd prefer that they confer first.

1 MR. MANGAN: We can do it at the next meeting --

2 THE LAW CLERK: Okay.

3 MR. MANGAN: -- if that's okay.

4 THE COURT: Because I want to confer with you about
5 that.

6 MR. MANGAN: Okay.

7 THE COURT: Fair enough. So the invitation stands.
8 We'll adjourn briefly.

9 (Proceedings concluded at 11:36 AM.)

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11 C E R T I F I C A T E

12 I, Luke T. Lavin, RDR, CRR, the undersigned, certify
13 that the foregoing is a correct transcript from the record of
14 proceedings in the above-entitled matter.

15

16 s/Luke T. Lavin
17 Luke T. Lavin
18 Official Court Reporter

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